

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING
Scott W Skavdahl, United States District Judge
Case No. 2:16-cr-0104-SWS-1

Darci Smith, Deputy Clerk
Anne Bowline, Court Reporter
Kelley Anderson, Law Clerk

October 27, 2016
Casper, WY

UNITED STATES OF AMERICA,

James Anderson, AUSA
Timothy J Forwood
Bruce Dexter, WY DCI

Plaintiff

vs

KYLE STEVEN HEBERT,

Keith Nachbar, CJA Counsel
David Pettinari
Debra Dean

Defendant

JURY TRIAL DAY 4

8:36 am	Court in session; above participants in attendance outside the presence of the Jury. <u>For reasons stated on the record, incorporated by reference herein, the Court DENIED the remaining component of the Defendant's Motion for Judgment as a Matter of Law.</u> Jury members returned to the courtroom; Mr Pettinari called forward and re-sworn.
8:41 am	<u>Cross Examination of David Pettinari</u> by Mr Timothy Forwood
9:16 am	Brief Voir Dire of the Defendant by the Court
9:17 am	<u>Re-Direct of Mr Pettinari</u> by Mr Keith Nachbar
9:19 am	Sidebar regarding exhibit F. The exhibit cannot be shown, the witness may testify about a search he conducted only.

9:21 am Re-Direct of Mr Pettinari continued by Mr Nachbar

9:24 am Sidebar

9:25 am Re-Direct of Mr Pettinari continued by Mr Nachbar

9:30 am Re-Cross of Mr Pettinari by Mr Forwood

9:33 am Defendant rests

9:34 am Court in recess

9:43 am Court in session; same participants in attendance; Jury members returned to the courtroom. Agent Leazenby called forward and sworn for Rebuttal

9:45 am Direct Examination of Agent Robert Leazenby by Mr James Anderson Exhibits 57 and 58 Demonstrative Only -

10:05 am Sidebar

10:07 am Direct Examination of Agent Leazenby continued by Mr Anderson

10:08 am Sidebar

10:09 am Direct Examination of Agent Leazenby continued by Mr Anderson

10:10 am Cross Examination of Agent Leazenby by Mr Nachbar

10:20 am Re-Direct of Agent Leazenby by Mr Anderson

10:21 am Re-Cross of Agent Leazenby by Mr Nachbar;

10:21 am Juror members given recess instruction, excused for the remainder of the morning and directed to return at 1:30 pm. The Court reviewed the morning's rulings with counsel and admonished both as to court practices. The Court also received a note/question from Juror number 53, read the note to counsel and advised how the response would be laid out.

10:27 am Court in recess

10:48 am Court in session; same participants in attendance; the Court went off the record for 2nd informal jury conference.
The Court pointed out upcoming changes:
Jury Instruction 17 – second sentence adding “and access”.
Jury Instruction 24 – last paragraph will be modified
The United States has no objections to packet and the Verdict Form as provided
The Defendant has objections to:
Jury Instruction 17 and has provided an alternative
Jury Instruction 18 and has provided an alternative re: knowingly
Absence of an Instruction regarding conviction for images/videos not contained within the Government’s exhibits. The Court will address and add certain language to existing instruction.

11:01 am Court went back on the record.
Instruction number 16 will be modified to add language regarding images/videos not in contained within the Government’s exhibits.
Instruction number 17 will be modified to add language
Instruction number 24 will be modified in the last paragraph.
No objections from the Government.
Defendant Objects to lack of additional language in 17, or to add their final proposed instruction.
The Court ruled on defendant’s objections as stated on the record.
Refused instructions labeled by the Court as noted. Refused instructions will be docketed.

Parties shall be given 40 minutes for closing arguments.

The Court turned to the issue of the Jury Question and discussed with counsel the proposed answer. Parties agree the Court will verbally address to the Jurors prior to or during Jury Instructions

11:23 am Court in recess

1:33 pm Court in session; above participants in attendance; Jury members returned to the courtroom.

1:35 pm Jury Instructions read and published to the Jury by the Court

2:04 pm Closing Argument by the Government through AUSA Timothy Forwood

2:27 pm Closing Argument by the Defendant through CJA Keith Nachbar

3:09 pm Alternate Juror(34) thanked for his service and excused. Bailiff called forward and sworn. Jurors retired to the jury room to begin deliberations. (Courtroom Deputy and Bailiff collected cellular phones, showed Jurors the JERS system and left Jurors to their deliberations).

3:14 pm Court in recess. A question was received from Juror number 4. Parties were directed to remain.

3:28 pm Court in session; same participants in attendance minus Mr Pettinari, outside the presence of the Jury. The Court read the proposed answer to the question to counsel and counsel reviewed. Defendant objects to the answer and believes it is contradictory to Jury Instruction number 2.

3:39 pm Court in recess

3:43 pm Court in session; same participants in attendance; counsel given a revised answer by the Court. No Objections. Answer delivered to the Jury by the Clerk and Bailiff.

3:45 pm Court in recess.

5:50 pm A note was received that the Jurors had a question.

6:00 pm Court in session; same participants in attendance. The Court reviewed the question with counsel and advised of the instruction that would be provided as the answer. Defendant objects to the Court's proposed response.

6:17 pm Court in recess to await the verdict

7:53 pm A note was received that a Verdict had been reached. Parties were called and directed to return to the Courtroom

8:08 pm Court in session; same parties in attendance minus Mr Pettinari. The Jury members were returned to the Courtroom and their Verdict was rendered. The Defendant was found guilty of the sole count in the Indictment. Jury members given a final instruction, thanked for their service and released. Defendant remanded to the United States Marshal Service pending sentencing on January 13, 2017 at 1:00 pm.

8:15 pm Court adjourned

Daily Witnesses:

David Pettinari

Robert Leazenby